

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Water Service Company (U 60 W), a corporation, for an order authorizing it to increase rates charged for water service in the Redwood Valley District by \$566,100, or 78.3%, in 2003, by \$205,600, or 16.0% in 2004, by \$200,300, or 13.4%, in 2005, and by \$201,000, or 11.9% in 2006.

Application 02-11-020
(Filed November 8, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
NOTICE OF INTENT TO SEEK COMPENSATION**

On May 11, 2002, Jeffrey Young (Young) and Marcos Pareas (Pareas) each served a Notice of Intent (NOI) to claim compensation for their participation in this proceeding. Young and Pareas' NOIs are prepared and submitted pursuant to Pub. Util. Code § 1801 *et seq.* and Rule 76.71 *et seq.* of the Commission's Rules of Practice and Procedure.¹

After reviewing these filings, I am unable to determine, based on the information provided in the NOI, whether Young and Pareas meet the definition of a customer, or have met the significant financial hardship test. Therefore, I cannot at this time conclude whether they are eligible for compensation in this

¹ Unless otherwise indicated, all subsequent citations to code sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

proceeding. Young and Pareas may amend their respective NOIs to make this showing no later than May 27, 2003. Until the Commission is able to make a determination on the NOIs, both parties are at risk that any expenses they incur may not be compensable. Furthermore, the Commission cannot determine whether Young and Pareas have made a substantial contribution to the proceeding until the proceeding has concluded.

1. Timeliness

Section 1804(a)(1) provides that an NOI must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. Young and Pareas did not become intervenors until after the PHC was held and they have filed their NOIs within 30 days after the May 2, 2003 ruling granting them intervenor status. I therefore consider the NOIs to be timely.

2. Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a “customer” and that participation without compensation would pose a significant financial hardship.

2.1 Customer Status

Section 1802(b) defines the term “customer” as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. . .

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. (*See* D.98-04-059, *mimeo.*, at pp. 83 and 88.)

A Category 1 customer is an actual customer who represents more than his own narrow self-interest; a self-appointed representative of at least some other consumers, customers, or subscribers of the utility. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers' views in a proceeding. The Commission has noted that the statute permits a series of authorizations. For example, a customer or group of customers forms or authorizes a group to represent them, and the group in turn authorizes a representative such as an attorney to represent the group. A Category 3 customer is a formally organized group authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers.

In their NOIs, Young and Pareas do not indicate their customer status (i.e., whether they are a current customer of California Water Service

Company or on a waiting list, etc.) Furthermore, they do not indicate whether they are a self-appointed representative of other customers of the utility (Category 1) or a representative who has been authorized by actual customers to represent them under a more formal arrangement (Category 2) or a formally organized group authorized to represent the interests of residential customers (Category 3). This determination is important because it impacts the requirements for a finding of significant financial hardship.

If Young and Pareas seek a finding of eligibility they must amend their NOIs no later than May 27, 2003, to specify the customer category they seek eligibility under.

2.2 Significant Financial Hardship

Young and Pareas seek a finding of significant financial hardship.

Section 1804(a)(B) allows the customer to include a showing of significant financial hardship in the NOI. Section 1802(g) defines “significant financial hardship” as:

“either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed.

If Young and Pareas seek to participate as a Category 1 customer, they must demonstrate that undue financial hardship will occur as a result of their participation here. (See Section 1802(g).) D.98-04-059, *slip op.* at p. 36,

requires participants seeking a finding of significant financial hardship to disclose their finances to the Commission, under appropriate protective order. As described in D.98-04-059, this means that Category 1 customers must disclose their gross and net monthly income, monthly expenses, cash and assets, including equity in real estate. Subsequent rulings have determined that it is reasonable to exclude the equity of a participant's personal residence from this disclosure.

If Young and Pareas seek to participate as a Category 2 customer, *i.e.*, as a representative authorized by a customer, we expect the representative to provide the same financial information described above for the customer who authorized him to serve in a representative capacity.

Without such information, the Commission is not in the position to determine whether participation constitutes a significant financial hardship for a Category 1 or 2 customer. In order to reduce the burden of producing such information, customers seeking eligibility rulings are able to file personal financial data under seal. In D.98-04-059, we developed a model filing for individual intervenors to obtain a protective order for use in intervenor compensation proceedings. For convenience, the model filing and protective order are attached to this ruling as Appendix A and B. As described in D.98-04-059, *slip op.*, p. 40:

“Procedures for obtaining information and records in the possession of the Commission are described in General Order (GO) 66-C. Section 2 of GO 66-C describes some of the public records that are not open to public inspection. An intervenor seeking a protective order governing availability of personal financial information will need to assert a ground for excluding such personal financial information from public inspection.

GO 66-C § 2.2 includes as a public record not open to public inspection “[r]ecords or information of a confidential nature furnished to, or obtained by the Commission.” The personal financial information of an individual intervenor is arguably information of a confidential nature. While it is important to make this information available to parties preparing to respond to an individual intervenor’s assertion of eligibility for compensation, it is difficult to imagine a situation where a public benefit warrants making the personal financial information of an individual intervenor generally available for public inspection. However, we do not rule out the possibility that such a situation may present itself. Therefore, we will consider GO 66-C requests from individual intervenors to exclude their personal financial information from public inspection on a case-by-case basis. ”

If Young and Pareas seek to participate as Category 1 or 2 customers, they must meet the requirements for disclosure described above to qualify for a finding of significant financial hardship.

If Young and Pareas seek to participate as a Category 3 customer, § 1802(g) defines financial hardship as a state in which “the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.” To qualify for a finding of significant financial hardship under Category 3, Young and Pareas will need to demonstrate that effective participation in this proceeding may cost well in excess of typical residential electric bills for its individual members. In order to make that finding, we need to know the estimated cost of Young and Pareas’ participation and the average bills of the members of the organization they are appearing for, as well as the financial situation of the organization.

Because Young and Pareas did not include a financial showing in their NOIs and we cannot determine which customer category they intend to participate under, we are unable to determine whether they have satisfied the significant financial hardship requirement. Young and Pareas may provide such information in amended NOIs if desired or may make the required showing in the request for award of compensation. In either case, Young and Pareas are reminded that a finding of significant financial hardship in no way ensures an award of compensation (Section 1804(b)(2)).

3. Nature and Extent of Planned Participation; Estimate of Compensation

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

3.1 Planned Participation

The Commission has stated that the information provided on planned participation should provide the basis for a critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, *mimeo.*, at pp. 27-28, 31-33.) Parties are encouraged to coordinate amongst themselves to ensure that efforts are not duplicated.

The two NOIs describe Young and Pareas' participation in identical language: reviewing data and testimony, participating in hearings and filing

briefs. This is a sufficient description of Young and Pareas' planned participation at this stage of the proceeding.

Participation in Commission proceedings by parties representing the full range of affected interests is important and ensures a fully developed record. It is possible that the Commission may benefit from the participation of parties whose interests, while potentially overlapping, may also diverge on specific issues.

However, because Young and Pareas describe the same activities, I caution Young and Pareas that compensation will not be paid for duplicative efforts. Merely appearing and stating positions will not assure compensation. I encourage the Young and Pareas to work actively together and with the other parties to agree among themselves, on issues that they will each address, in order to avoid duplication of effort.

3.2 Estimate Compensation

Pub. Util. Code § 1804(a)(2)(A)(ii) requires that the NOI include an itemized estimate of compensation the intervenor expects to request. Young and Pareas each estimate that they seek compensation for out of pocket expenses such as travel costs, reproduction, mailing, and telephone and each expect their costs to be less than \$750. This is a sufficient estimate of compensation that the intervenors expect to request, and we may use this estimate to determine whether they will incur a significant financial hardship as a result of their participation.

IT IS RULED that:

1. Jeffrey Young (Young) and Marcos Pareas (Pareas) each have not provided sufficient information for the Commission to determine whether they are a customer as that term is defined in § 1804(b).

2. Young and Pareas each have not provided sufficient information for the Commission to determine whether they meet the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that they establish significant financial hardship.

3. Young and Pareas each fulfilled two requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of their planned participation, and by providing an itemized estimate of the compensation they expect to request.

4. The Commission cannot determine whether Young and Pareas meet the definition of a customer, or have met the significant financial hardship test and therefore, cannot at this time conclude whether they are eligible for compensation in this proceeding.

5. If Young and Pareas still seek a finding of eligibility to claim compensation in this proceeding, they shall file amended NOIs no later than May 27, 2003, as described herein.

Dated May 14, 2003, at San Francisco, California.

/s/ JANET A. ECONOME

Janet A. Econome
Administrative Law Judge

APPENDIX A

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

(proceeding caption)

(docket number)

Motion for Protective Order of (individual intervenor's name)
Regarding Personal Financial Information

I have filed separately today a (Notice of Intent to Claim Compensation or Request for Compensation), with attached personal financial information supporting my eligibility to claim compensation. I have filed it under seal. I submit this motion pursuant to General Order (GO) 66-C and request a limited protective order directing that my personal financial information be withheld from public inspection.

GO 66-C § 2.2 excludes from public inspection “[r]ecords or information of a confidential nature furnished to, or obtained by the Commission.” My personal financial information is confidential in nature. Making it generally available for public inspection would unnecessarily intrude on my privacy. Commission staff should be permitted to review this information because it provides facts pertinent to my showing of significant financial hardship, which is a component of my eligibility request. I recognize that parties of record may also wish to review and comment on this information, to discover facts that might support related pleadings before the Commission. To accommodate such review, I consent to the Commission’s use of an appropriate nondisclosure agreement.

Dated _____ at (location) .

(signature)

(Name)

(Address)

(Telephone Number)

(END OF APPENDIX A)

APPENDIX B

Model Nondisclosure Agreement Governing Disclosure of An Intervenor Financial Information

APPENDIX B

Nondisclosure Agreement Regarding Personal Financial Information of [name of intervenor] in [docket number]

I am a party or representative of a party in [docket number].

I understand that the personal financial information filed by [name of intervenor] in this proceeding is confidential, and I agree that I will use the information only for the purpose of responding to that person's Notice of Intent to Claim Compensation or Request for Compensation.

I will not disclose, copy or disseminate the confidential information in any manner, and I will safeguard the confidential information from inadvertent or incidental disclosure. I understand that confidentiality protections continue after this proceeding is completed.

Dated _____ at _____ (location) _____.

(Signature) _____

(Name)

(Address)

(Telephone Number)

(END OF APPENDIX B)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Seek Compensation on all parties of record in this proceeding or their attorneys of record.

Dated May 14, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.